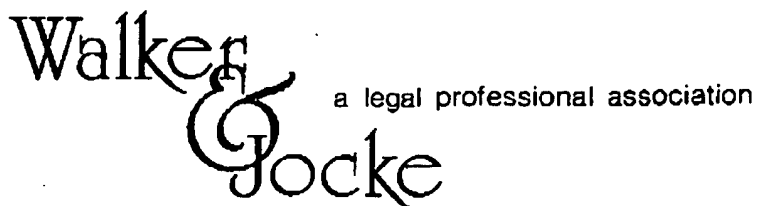


DEC 13 2006



Ralph E. Jocke
Patent
&
Trademark Law

FACSIMILE TRANSMISSION COVER SHEET

TRANSMITTING: 7 PAGES (INCLUDING THIS PAGE)

NAME: Mail Stop Petition
Director of Technology Center 3600

FAX NUMBER: (571) 273-8300

DATE: December 13, 2006

SENDER: Ralph E. Jocke, Esq.

FAX OF SENDER (330) 722-6446

In Re Application of: Jay Paul Drummond, et al.

Serial No.: 09/811,718

Confirm. No.: 2928

Filed: March 19, 2001

For: Method And System For
Connecting Services To An
Automated Transaction Machine

Art Unit 3624

Patent Examiner

Daniel S. Felten

Docket: D-1120 R2

Sir:

Please find enclosed a Petition pursuant to 37 C.F.R. § 1.181 for the above referenced application. No fee should be due with the submission of this Petition. However, if there are fees due associated with the Petition, please charge Deposit Account No. 09-0428 of Diebold Self-Service Systems.

Respectfully,

A handwritten signature of Ralph E. Jocke in black ink.

Ralph E. Jocke Reg. No. 31,029

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document and the documents indicated as enclosed herewith are being sent by facsimile transmission to the U.S. Patent and Trademark Office this 13th day of December, 2006.

A handwritten signature of Ralph E. Jocke in black ink, identical to the one above.

Ralph E. Jocke

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231 South Broadway, Medina, Ohio U.S.A. 44256-2601

DEC 13 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Jay Paul Drummond, et al.)	
)	
Application No.:	09/811,718)	Art Unit 3624
)	
Confirmation No.:	2928)	
)	Patent Examiner
Filed:	March 19, 2001)	Daniel S. Felten
)	
Title:	Method And System For)	
	Connecting Services To An)	
	Automated Transaction Machine)	

Mail Stop Petition
Director of Technology Center 3600
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO THE DIRECTOR PURSUANT TO 37 C.F.R. § 1.181

Sir:

Appellants hereby Petition the Director pursuant to 37 C.F.R. § 1.181:

- To withdrawal the Notification of Non-Compliant Appeal Brief dated December 1, 2006; and
- To correct the Office's records to reflect that the most recent Appeal Brief was filed on March 19, 2004.

DEC 13 2006

Statement of Facts

In response to the Office Action dated January 13, 2003, Appellants filed an Appeal Brief pursuant to 37 C.F.R. § 1.192 on October 6, 2003. On March 19, 2004 Appellants filed a Supplemental Brief pursuant to 37 C.F.R. § 1.192 in response to a Notification of Non-Compliance mailed February 20, 2004.

On July 19, 2005 the Examiner issued a second Notification of Non-Compliant Appeal Brief. This second Notification stated that "The Appeal Brief filed on 03/19/2004 is defective for failure to comply with one or more provisions of 37 CFR 41.37." However, as the record verifies, 37 C.F.R. § 41.37 did not exist at the time Appellants' Supplemental Appeal Brief ("Brief") was filed. Rather Appellants' Supplemental Appeal Brief was filed pursuant to 37 C.F.R. § 1.192, which was the applicable rule as of March 19, 2004. Thus, the second Notification was improper. In response to the second Notification, Appellants' filed a Response on August 2, 2005 which requested the Notification to be withdrawn.

On December 1, 2006 the Examiner issued a third Notification of Non-Compliant Appeal Brief. This third Notification stated that "The Appeal Brief filed on 10 August 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37."

However, as the record verifies, Appellants did not file an Appeal Brief on August 10, 2005. Rather on August 3, 2005 Appellants filed only a response to the second Notification which included a request to have the second Notification withdrawn.

Appellants have reviewed the Private PAIR web page for the present application. No Appeal Brief is shown as being filed on August 10, 2005. However, the Transaction History of Private PAIR for the present application does show an incorrect entry that an Appeal Brief was filed on September 14, 2006. A copy of this Transaction History web page is enclosed.

Appellants respectfully submit that no Appeal Brief was filed on either August 10, 2005 or September 14, 2006.

Thus the most recent Supplemental Appeal Brief of record was filed on March 19, 2004. Again, as the record verifies, 37 C.F.R. § 41.37 did not exist at the time Appellants' Supplemental Appeal Brief ("Brief") was filed. Rather, Appellants' Supplemental Appeal Brief was filed pursuant to 37 C.F.R. § 1.192, which was the applicable rule as of March 19, 2004.

The Office's "Clarification of the Effective Date Provision in the Rules of Practice Before the Board of Patent Appeals and Interferences (Final Rule)" states: **"Appeal briefs filed prior to September 13, 2004 must either comply with former § 1.192 or new § 41.37."** Applicants' Brief was filed over five months prior to September 13, 2004 and specifically states on page 1, that, the Brief was filed pursuant to 37 C.F.R. § 1.192. Thus the reasons checked off in the third Notification (and second Notification) with respect to alleged defects in the Brief pursuant to 37 C.F.R. § 41.37 are improper and should be withdrawn.

Second, the alleged defects pursuant to 37 C.F.R. § 41.37 would not have been defects pursuant to 37 C.F.R. § 1.192. For example, 37 C.F.R. § 1.192. (c)(9) requires a single Appendix which contains a copy of the claims involved in the appeal. An "Evidence appendix" and a "Related proceedings appendix" such as specified under 37 C.F.R. § 41.37 (c)(ix) and 37 C.F.R. § 41.37(c)(x) respectively are not required pursuant to 37 C.F.R. § 1.192.

Third, the defects pointed out in the Notification do not exist in Appellants' Brief. For example, the Brief does not reference evidence entered by the Examiner. Thus there were no copies of such evidence to submit in an Evidence appendix of the Brief. Also the Brief does not reference any proceedings in the Related Appeals and Interferences section. Thus there were no

copies of the decisions rendered by a court or the Board to submit in a Related proceedings appendix of the Brief.

Although Appellants timely filed their first Appeal Brief on January 13, 2003 and their Supplemental Appeal Brief on March 19, 2004, the multiple improper Notifications of Non-Compliant Appeal Brief have resulted in extensive delay in Appellants' Appeal of the rejections in the case.

**Petition to Withdraw the Notification of Non-Compliant
Appeal Brief Dated December 1, 2006**

The Notification of Non-Compliant Appeal Brief is without legal basis. Appellants filed a Supplemental Brief pursuant to 37 C.F.R. § 1.192 on March 19, 2004. Appellants Supplemental Brief fully complied with the requirements of 37 C.F.R. § 1.192 which were the only rules in effect as of March 19, 2004. Thus the reasons checked off in the third Notification (and in the second Notification) with respect to alleged defects in the Brief pursuant to 37 C.F.R. § 41.37 are not applicable to an Appeal Brief properly filed under 37 C.F.R. § 1.192.

Appellants petition for the Office to withdraw the Notification of Non-Compliant Appeal Brief dated December 1, 2006.

**Petition to Correct the Office's Records to Reflect that the Most Recent
Appeal Brief Was Filed on March 19, 2004**

As best understood, the Examiner has reviewed Appellants' Supplemental Appeal Brief dated March 19, 2004, but mistakenly accorded it a filing date of August 10, 2005. Applicants respectfully submit that no Appeal Brief was filed on August 10, 2005. Also Private PAIR incorrectly associates a date of September 14, 2006 for an Appeal Brief which Appellants never

filed on that date. Any references to Appellants having filed an Appeal Brief on August 10, 2005 or September 14, 2006 should be removed from the Offices records.

Appellants petition the Office to correct the Office's records to reflect that the most recent Appeal Brief was filed on March 19, 2004.


Fees

No fee should be due with the submission of this Petition. However, if there are fees due associated with the Petition, please charge Deposit Account No. 09-0428 of Diebold Self-Service Systems.

Conclusion

Appellants petitions should be granted for the reasons presented herein. The undersigned will be happy to discuss any aspect of the Application by telephone at the Office's convenience.

Respectfully submitted,



Ralph E. Jocke
WALKER & JOCKE
231 South Broadway
Medina, Ohio 44256
(330) 721-0000

Reg. No. 31,029

Transaction History

Date	Transaction Description
12-01-2006	Notice -- Defective Appeal Brief
09-14-2006	Date Forwarded to Examiner
09-14-2006	Defective / Incomplete Appeal Brief Filed
09-14-2006	Appeal Brief Filed
06-30-2006	Case Docketed to Examiner in GAU
08-08-2005	Date Forwarded to Examiner
08-03-2005	Amendment/Argument after Notice of Appeal
07-19-2005	Notice -- Defective Appeal Brief
07-11-2005	Date Forwarded to Examiner
03-19-2004	Defective / Incomplete Appeal Brief Filed
03-19-2004	Appeal Brief Filed
02-20-2004	Notice -- Defective Appeal Brief
10-31-2003	Date Forwarded to Examiner
10-08-2003	Defective / Incomplete Appeal Brief Filed
10-08-2003	Appeal Brief Filed
10-08-2003	Request for Extension of Time - Granted
09-29-2003	Mail Advisory Action (PTOL - 303)
09-29-2003	Advisory Action (PTOL-303)
04-09-2003	Notice of Appeal Filed
01-13-2003	Mail Non-Final Rejection
01-10-2003	Non-Final Rejection
12-18-2002	Mail Examiner Interview Summary (PTOL - 413)
12-16-2002	Examiner Interview Summary Record (PTOL - 413)
10-11-2002	Date Forwarded to Examiner
10-01-2002	Response after Non-Final Action
07-02-2002	Mail Non-Final Rejection
06-28-2002	Non-Final Rejection
04-23-2002	Case Docketed to Examiner in GAU
08-06-2001	Information Disclosure Statement (IDS) Filed
11-16-2001	Case Docketed to Examiner in GAU
03-19-2001	Preliminary Amendment
05-02-2001	Application Dispatched from OIPE
04-30-2001	Correspondence Address Change
04-10-2001	IFW Scan & PACR Auto Security Review
03-19-2001	Initial Exam Team nn

NO BRIEF WAS FILED
ON THIS DATE.

THIS LINE SHOULD BE
REMOVED

[Close Window](#)